Supreme Court, U.S.
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(2)

No. 99-1934

In The Supreme Court of the United States

STATE OF ILLINOIS, et. al.,
Petitioners

v.

MICHAEL J. McDONNELL,
Respondent,
Pro Se

On Petition For A Writ Of Certiorari

RESPONDENT'S BRIEF IN OPPOSITION

Michael J. McDonnell,
Respondent, Pro Se

97 Abbey Ct.
Ramsey, NJ 07446
201-825-3771

36pp

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Respondent/Plaintiff, Pro Se Michael J. McDonnell brought suit in New Jersey Superior Court, Law Division on 7/10/95. I alleged that defendants wrongfully terminated me in violation of the age provisions New Jersey Law Against Discrimination

Defendants in that suit were:

The State of Illinois;
State of Illinois, Department of Revenue;
Samuel McGaw, Commissioner of Revenue
Joseph Bartletti;
Juan C. Morales;
Frank Nugnes
Brian McGrail
Docket No. BER-L-6904-95

On August 4, 1997, Defendants filed a motion alleging lack of jurisdiction and other grounds.

On Sept. 19, 1997 the Trial Court ruled in my favor and dismissed Defendants motion.

After a Motion For Reconsideration by Defendants, the Trial Court reversed itself and dismissed my suit on October 24, 1997.

On 12/26/97, I filed an appeal of the above ruling to the Appellate Division of the New Jersey Superior Court. I prevailed in a unanimous reversal of the trial court ruling. This decision may be referenced at 319 N.J. Super 324, 748 A. 2d 1105 (1999)

Defendants/Appellants then filed an appeal with the New Jersey Supreme Court. I prevailed, in a 7-0 Per Curiam decision, in that proceeding. This case is referenced at 163 N.J. 298, 748 A.2d 1105 (2000).

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Table of Cited Authorities

1. United State Supreme Court Cases

Nevada v. Hall, 440U.S. 410, 1979

Kimel v. Florida Board of Regents, __U.S. __, 120 S.Ct. 631 (2000))

Alden v. Maine, 527 U.S. 706 (1999)

2. Other Cases

McDonnell v. State of Illinois, 163 N.J. Super 298, 748 A2d. 1105 (1999)

McDonnell v. State of Illinois, 163 N.J. 298, 748 A2d 1105 (1999)

3. Statutes

Illinois Human Rights Act, 775 ILCS, 5/1-101, et. seq.

New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq.

Reasons for Denying the Writ

I. My opposition based on Court Rule 14(4)

II. My opposition based on the premise that no conflict of laws exists as to Nevada v. Hall 440 U.S. 410, (1979). Further, that there is no substantive difference with respect to sovereign responsibilities between Hall and the case at bar.

III. My opposition based on the premise that recent cases cited by Petitioner do not imply that Nevada v. Hall needs be reevaluated.

I. Opposition based on Court Rule 14(4)

Under the Rules of the Court, (Rule 14(4)), "The failure to present with accuracy, brevity, and clarity, whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition".

Rule 14,1(g) requires "A concise statement of the case setting out the facts material to consideration of the questions presented..."

I respectfully submit that Petitioners have distorted the facts of the matter to such an extent as to warrant a denial of their petition.

I submit that the version presented by Petitioners is a cynical gambit, based on an assumption that I would not file a brief in opposition.

The version that I present herewith is, in substance, the same as the one presented to the Appellate and Supreme Courts of New Jersey.

Petitioners did not challenge my version of the facts before those courts.

I am mindful that the facts presented below must be proven as discriminatory under the New Jersey Law Against Discrimination.

I am presenting the facts (supported by appended memos) in order to establish that Petitioners have intentionally misled the Court for purposes of obtaining a Writ from this Court, in violation of Rule 14.

I beg the Court's indulgence for the length and somewhat argumentative nature of my presentation in this in this regard. However, I feel that it is essential for me to make a full

presentation of the facts in order to demonstrate a clear violation of Rule 14 .

Petitioners have not responded to any of my interrogatories since 1995.

However, when I was fired, I asked for, and received most of my local personnel file. The appended memos are a part of that record.

The following account is given in (Statement of the Case), by Petitioners as the immediate cause of my termination:

"..and later that year *it was discovered* that he had failed for almost two months to *turn in several checks that had been tendered to him* in payment of tax obligations. *After a full review* by Respondents supervisors in Paramus, the decision to fire Respondent was made by officials at the Department's central office in Springfield, Illinois. Respondent was fired in August 1993. App. 11-12"

The memos appended to this brief will suffice to demonstrate the version of the events provided by Petitioners in this proceeding is intentionally distorted.

Petitioners may argue that their version does not literally distort. However, the net result is that an impression of gross negligence and/or misconduct was intentionally conveyed.

By way of a reply to the Petitioners narrative above, I respectfully submit the following facts and comments:

I /a- Events Leading To My Termination.

1. On or about May 24, 1993, correspondence related to one of my audits arrived in the IDOR office in Paramus, New Jersey.

2. The correspondence included a cover letter, voluminous tax returns and several checks totaling approximately $48,000.

3. The checks were payable to the Illinois Department of Revenue. This remittance was in payment of a tax obligation as determined by audit.

4. A procedure of long standing was in effect, concerning the handling of correspondence and depositing of checks.

According to this procedure, an administrative employee would open all mail, examine the correspondence, and remove any checks. The administrative worker would then make photocopies of any checks, attach the photocopies to the correspondence and deposit the checks in the IDOR bank account.

The administrative employee would then put the correspondence and photocopies of the checks in the mail slot of the auditor who was working on the case.

5. In the particular incident that resulted in my discharge, the administrative worker opened the correspondence and failed to notice that checks were attached to the correspondence.

6. As a result of the oversight of the administrative worker, the actual checks, and not photocopies thereof, were placed in my mail slot.

I had never received checks in my mail slot before. Auditors, as a rule, do not handle checks at all.

7. On or about May 24, 1993, I retrieved my mail for the day from my mail slot.

I perused the correspondence too briefly. I was working on another case at the time.

I failed to notice that the actual checks, and not the accustomed photocopies, were attached.

8. My error consisted of not catching the error of the administrative employee. I placed the entire correspondence

(including the checks) in my filing cabinet with the rest of the file for that case.

9. I resumed work on the case in question on or about July 5, 1993. This lapse in time was not at all unusual, since I maintained a caseload of approximately 12 ongoing audits.

At that time, I discovered that checks were attached to the correspondence. I immediately brought the checks forward to an administrative worker for deposit.

10. This sums up the entire incident.

I/b - Alleged Misleading Statements Made By Petitioners in This Proceeding

1. The *"several checks"* mentioned, were received in one envelope, from one taxpayer. The clear implication of the Petitioner is that several different events were involved. This event involved one incident of oversight.

2. They were not personally "tendered". The clear implication of Petitioners is that I somehow pocketed checks on more than one occasion.

The above facts are a far cry from "several checks being tendered to Mr. McDonnell"

Such activity, if true, would indicate serious misconduct or gross negligence on my part.

Petitioners appear to be willing to take the risk that the Court might so assume.

3. As mentioned above, the checks were mailed to the IDOR and initially mishandled by another employee. In the course of their "full inquiry", incredibly, no mention at all was made of the role played by the other employee, or that my responsibility and error, was secondary.

4. Petitioners stated that "*it was discovered* that he failed to turn in several checks that were tendered to him." The clear implication of this remark is that I had done something intentionally wrong, or was grossly negligent, and that their investigation found me out.

I discovered the checks and brought them forward.

Petitioners made much of "*.. failed for almost two months turn in*...".

There is an implication of intentionally failing to "turn in" the checks for some nefarious reason.

Petitioners failed to mention that this incident occurred in the context of my carrying a caseload of about 12 cases.

5. Petitioners claim that a *full review was conducted* .
As the facts presented below, will confirm, this is utterly false and misleading.

6. Incredibly, the role of the administrative worker in the error was not even mentioned in either their memoranda, which were used as a justification for my discharge, or in the Statement of Case given in this Proceeding

I /c - Written and Oral Statements Made by Respondent and Petitioner and Actions Taken Against Respondent.

1. On July 7, 1993, I was asked by Supervisor/Petitioner Brian McGrail to write a memo (Exhibit 1) explaining the events involved.

I was under the impression that this was a mundane request. McGrail, in no way, indicated that the matter was considered job threatening, or that the vaunted "full inquiry" was under way. I was again working on another of my cases.

I learned, only later, that a figurative lynching party was being organized.

In this memo, much to the delight of Morales, I made a small and unintentional misstatement.

I said that "When the material was received, I had no reason to expect checks as I had not even finalized the audit."

This was incorrect. In my haste, I did not consult my audit log before writing the memo. The statement is incorrect in that I had previously indicated in my log (Exhibit 2), that I expected to receive checks from the taxpayer in question..

However, to say that I did not expect checks in my mail slot is also correct.

The plain fact is that my state of mind, when I handled the correspondence on or about May 24, 1993 was that I was not expecting checks. It simply did not register with me, at that time, that there were checks attached.

It is also true that it was highly unusual for checks to be sent before an audit was finalized.

I indicated that the checks were received on 5/26. The actual date the checks were received was on 5/24. This entry was made on or about the date that I noticed the checks were in my filing cabinet, which would have been on or about 7/5/93.

It is obvious that I could not have made this entry until I focused on the checks.

2. Almost immediately after giving my memo to McGrail, on July 7, I noticed that I had erred in the way stated above.

I went to McGrail and explained this to him. I explained to McGrail that my state of mind, at the time the checks were placed in my mail slot, was truly that I was unaware that actual checks were attached.

McGrail indicated that he understood my explanation of the matter, then suggested that we go into the office of his superior Juan Morales to discuss the matter.

It is proven, from a reading of Exhibit 3, that this explanatory meeting took place.

McGrail's memo to Morales, written the day after my memo to Morales states: "In the early afternoon, Mike, you and I met to discuss this incident..."

The following deductions can be made with a high degree of certainty from (Exhibit 3):

a. I had discussed the matter thoroughly with McGrail prior to the meeting.

b. I had indicated that the matter was inadvertent.

c. The issue of expecting or not expecting checks was discussed by McGrail and me, prior to the meeting.

d. There was little doubt on the part of McGrail as to the event was an oversight.

e. Therefore, his reference to "further investigation " is disingenuous and capricious.

f. It was disingenuous for McGrail and Morales to focus on the memo after our meeting had rendered the memo inoperative. I submit that I was justified in believing that the memo had been trumped or superceded by the meeting.

3. On July 7, after composing my memo, and advising McGrail of the error mentioned above, the explanatory meeting was held.

Morales, McGrail and I discussed the matter. The event and my memo containing its misstatement were discussed. Morales and McGrail indicated that they understood the matter in full.

The matter was aired in full, including my correction of my memo. A reading Exhibit 3 establishes that the "expectations" issue was, and of necessity had to be discussed.

I left the meeting fully satisfied that I had set the record straight in what could only be interpreted as an oversight in any case.

I had no further discussions with any member of IDOR management regarding this incident until I was summarily fired.

Despite Petitioners claim that a full inquiry was undertaken, I had no opportunity to explain myself in any way.

I was told that I had no right of grievance, since I was not covered by a union contract as are "in state" employees.

Despite the matter having been fully aired at the meeting, McGrail capriciously backtracked as if the matter had not been resolved:

"..Further investigation into Mike's EDC-5 (audit history worksheet), revealed that on 5/20/93 a statement indicated that Mike was expecting the checks. Moreover, on 5/26/93, Mike's EDC 5 states that he received a summary letter and checks from the taxpayer.

It is perfectly obvious that a case was being trumped up, when they failed to take my correction into account and resorted to reaching into my mind, as to what I was expecting or not expecting. *(knowing full well the actual state of the case)*

Auditors do not intentionally put checks for deposit in their filing cabinets

McGrail said (Exhibit 3) that I made statements in our meeting that contradicted statements in the audit log. *This is false.*

For this statement to be true, I would have had to nonsensically stick to my inadvertent remark that I was not expecting to receive checks.

I had, of necessity, reviewed my log prior to the meeting.

There is no way that I could, or would, have maintained the contradictions once I had looked at the log.

The log clearly indicates that there was an error in the memo. It is established that I had so stated prior to the meeting, and could not have maintained otherwise in the meeting.

To make a case of "expecting or not expecting", is reminiscent of the 1930's Stalin purge trials, where the hapless defendants had to confess not only what they did, but also what they were thinking.

I submit that the Petitioners, realizing that their case was basically absurd, attempted to justify their actions by resorting to capricious word games. They set out to obscure the inadvertent and insignificant nature of the event.

The overriding reality is that any confusion regarding my expectation as mentioned in my log could not fail to have been cleared up by the airing of the matter in the meeting of July 7, 1993.

The very fact that I was terminated over such a trivial matter, establishes that the memos of Morales, McGrail and Bartletti were disingenuous.

At the time of the meeting, it was clear to all three of us that my memo had been trumped by the meeting.

I was not asked to provide a written correction after the meeting.

It is obvious that they wanted my memo to appear to be my last word on the event. An examination of Exhibit 3 bears this out.

Petitioners have artfully created a false test of my credibility.

This argument is vitiated by the fact that all issues were fully and completely aired at the meeting of July 7.

4. On July 8, 1993, Morales wrote a memo to his superior in Illinois, Petitioner Joseph Bartletti. (Appendix-Exhibit 4.)

Realizing that a simple inadvertent error would not suffice as a cause of termination, Morales set about embellishing the event.

His memo, complete with transparent crocodile tears, made no mention of the fact that the greater part of the error was that of another person with primary responsibility for handling the checks in the first place.

Additionally, this memo was written as if the previous day's meeting, between the three of us had not occurred.

In view of these two glaring omissions, the capricious and discriminatory intent of Morales is proven.

It is certainly not much of a "full inquiry".

He makes much of my "expecting checks, etc.". He refers to my "latest explanation", knowing full well that the latest explanation was given at the July 7 meeting, and not in my memo.
This entire exercise on the part of Morales, McGrail, and Bartletti was nothing short of ridiculous.

I was not aware of his memo to Morales or Morales' memo to Bartletti until after I was fired.

There were no further communications with me, after the July 7, 1993 meeting, until I was summarily fired.

I was called on the phone, while on an out of town audit, 300 miles from home. I was told to cease and desist my work on the spot, and turn in my computer and credentials as soon as I returned to New Jersey. I was not even given two weeks notice.

These facts make a mockery of the assertion in the present Petition that a "full investigation" was conducted, and that they "did everything they could " to save my job.!!

Exhibit 4 and 5 make it obvious that no real inquiry was desired.

On the contrary, the emphasis was on immediate dismissal.

My memo was in no way a sworn statement . I was not informed that my memo was part of an "investigation", which might involve my job.

I did not think for a moment that management would hold me accountable over such a minor matter and in such a grotesque way.

I submit that it was a desire, to paint the event as involving wrongdoing, that motivated Morales . *He knew the true facts. from the beginning*

5. On July 14, 1993, Petitioner Joe Bartletti, Morales superior in Illinois wrote a memo to Petitioner Mike Scaduto. (Appendix Exhibit-5).

In this memo, Bartletti states: "..Furthermore, when questioned on July 7 about the incident, Mr. McDonnell denied he knew he had the checks. A later review of the audit file contradicted what he told management on that day..."

This is a completely false and meaningless statement, offering no detail whatever.

Again, this is a transparent attempt to color the event as wrongdoing.

This memo takes the game one step further away from anything remotely resembling a "full investigation".

I believe that the "full investigation" consisted, for the most part, of the capricious memos appended herewith, along with any phone calls that might have been assisted their preparation. I submit that this entire exercise was a capricious farce.

6. In furtherance of their machinations, Petitioners went so far as to try to deny me unemployment compensation. They alleged wrongdoing on my part.

The Illinois Department of Employment Security conducted its own investigation and informed the DOR that there was no wrongdoing under the circumstances.

In their answer to my suit filed in 1995, Petitioners indicated misconduct as one of their defenses. As mentioned previously, the Illinois Department of Employment Security advised them that misconduct was not involved.

In pleadings before the Appellate Division and Supreme Court of New Jersey, Petitioners then switched their main line of defense to that of incompetence.

I pointed out in my filings with the New Jersey Appellate and Supreme Courts that the defense of incompetence was dubious.

I was told by the instructors, that I scored the highest mark of approximately 50 trainees in the final exam of the training class to become a revenue auditor for the IDOR. in 1989.

7. Petitioners have refused, since 1995, to answer any of my interrogatories. I have attempted to ascertain the actual monetary loss to the State of Illinois as a result of the oversight. In modern cash management systems, the taxpayer would suffer no loss from the date the check was written to the date actually presented to its bank. The interest payable to the State would still accrue until it logged in the check. Thus, it would appear that the matter was much ado about nothing.

I believe that, if this litigation is allowed to proceed on its merits in the Courts of New Jersey, I will have no difficulty in proving my case. I believe that I will be able to establish that Illinois' state employees, are by no means routinely fired for such inadvertent and innocent lapses such as delays in check cashing.

Also, McGrail's comment in Exhibit 3, indicates that there was no monetary loss involved.

If true, this would contradict an assertion in Petitioners Answer in that that there was a loss but that could not determine how much..

8. The Statute of Limitations lapse, referred to in the Statement of Case, is also a minor and commonplace event, and cost the State of Illinois the sum of $700.

I have asked Petitioners, in my, as yet unanswered, interrogatories, to provide data in this regard as well.

I believe that I can demonstrate similar losses, (involving one of the Petitioners) due to inadvertent oversight, to the State of approximately $1,000,000, that involved only a slap on the wrist.

This would make a mockery of the tone of Exhibits 3, 4, and 5.

9. In a slight digression, I would like point out that the Appellate Divisions' opinion contained a minor error in that the checks did not "sit on my desk".

II Appellants Questions Raised.

1.

" Review should be granted to determine whether allowing Illinois to be sued in the Courts of New Jersey over Illinois firing of a state tax auditor would interfere with Illinois ability to fulfill the "sovereign responsibilities" of the employment of state agents and the collection of taxes.."

Comment:

In Nevada v. Hall, 440 U.S. 410, (1979), it was held that a state is not constitutionally immune from suits in the courts of another state.

The Court in Hall pointed out that there could be instances where a state's sovereignty was so infringed upon as to require a different analysis by the Court.

I submit that the case at bar is not significantly different in substance from Hall. Petitioners have advanced the argument that this is just the case to require a conclusion different from Hall. I disagree.

I believe that there is very little substantive difference between the present case and the principles of Nevada v. Hall. Both cases concern an alleged wrong against an individual

In both cases, the alleged civil wrong was committed by agents of a state within the borders of a sister state.

Both of the alleged wrongs involved actions by state agents while working in their official everyday capacities.

Both of the Plaintiffs were allegedly injured in a way that could have been caused by a private entity.

Neither Plaintiff sought to alter the sovereign functioning of the sister state.

Presumably, both Nevada and Illinois continue to exercise their everyday business affairs without apparent detriment. They have not been greatly affected by these suits.

The legislatures of both California and New Jersey have spoken their will that individuals, within their borders, be protected against the specific wrongs complained of.

I submit that just as in Hall, the present case presents no threat to the sovereign responsibilities of Illinois. I am not seeking to alter the way in which Illinois conducts its affairs, other than to seek redress for a specific wrong.

The Court, in Hall, held that Nevada's sovereign responsibilities could hardly be affected by being amenable for a civil wrong in California.

The New Jersey Supreme Court in this case has held that Illinois was free to go about its sovereign activities in New Jersey so long as it did not violate New Jersey law.

There is no conflict of law that would require the Court to intervene at this time.

To my knowledge, no jurisdiction has disagreed with the principles held in Nevada v. Hall, 440 U.S. 410 (1979)

The principles of Alden v. Maine 527 U.S. 706 (1999) do not conflict with those of Nevada v. Hall, 440 U.S. 410 (1979).

That case dealt with a states' refusal to waive immunity within its own borders and whether Congress could abrogate that refusal. No such issue is at bar in this case. Illinois does waive immunity on a regular basis within its borders and suffers no apparent detriment .

In writing for the majority in Alden, Justice Kennedy indicated his support for the principles of Hall:

"..our decision in Hall does not support the argument used by petitioners here. The decision addressed neither Congress' power to subject States to private suits, nor the States' immunity in its own courts. In fact, the distinction drawn between a sovereign's immunity in its own courts, and its immunity in the courts of another sovereign, as well as the reasoning on which this decision was based are consistent with and even support the propositions urged by the respondents here- that the Constitution reserves to the States a constitutional immunity from suits in their own courts which cannot be abrogated by Congress."

I submit that Kimel v. Florida Board of Regents, __U.S.___(2000) does not conflict with Nevada v. Hall, indeed it seems to complement Hall.

Justice O'Connor pointed out in Kimel that state employees could still avail themselves of remedies against discrimination under state statutes. I am confident that Justice O'Connor did not intend that an entire class of "out of state" state employees have no remedy.

Petitioners maintain that their sovereignty would be infringed upon if they had to be held accountable for violations of New Jersey law committed within New Jersey.

Nevada v. Hall ruled that both states are co equal sovereigns.

New Jersey's sovereignty would be diminished if its laws did not need to be heeded by Petitioners.

Petitioners are attempting to mask their role as an employer in New Jersey with its sovereignty arguments.

The sovereignty of Illinois is no way diminished when it is answerable for such civil wrongs. Indeed, good relations between states or cooperative federalism, it seems to me, requires a state to obey the laws of a sister state while doing business within that state, just as it would have it within their own state.

The New Jersey Supreme Court, in the present case, went so far as to rule out re-instatement as to remove any possible interference with its tax collecting functiou in forcing Illinois to employ someone who they rightly or wrongly felt they did not wish to represent them.

This is an employment case. There are no weighty issues infringing on the sovereignty of Illinois.

I submit that the Appellate Court, 319 N.J. Super. 324, had it right in that I would be effectively without a remedy if Petitioners were to prevail.

The State of Illinois has insisted throughout that I file my suit under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.,

They have refused to acknowledge that I was not even covered by the HRA. The language of that Act clearly indicates that it is intended to protect the citizens of Illinois. It also clearly requires that to be considered an employee within the meaning of the HRA, one must be employed within Illinois for remuneration.

This was affirmed by the Appellate Court.

At the proceeding before the New Jersey Supreme Court, Petitioners presented a legal opinion from the General Counsel of the IDOR stating the opinion that I "could" have brought suit under the HRA.

This carefully worded opinion ignored all of the definitional requirements of the HRA. It refrained from opining that I should or must bring suit under the HRA.

The Supreme Court of New Jersey, agreed that I "could" have brought suit in Illinois under the HRA, but was time barred when I brought suit in New Jersey.

The finding that I "could", rather that "should", begs the question of whether a Court in Illinois would likely entertain my suit given the strict definitional requirements and stated purpose of the Illinois HRA.

It also begs the question of why I would file a suit in Illinois after reading the requirements and purposes of the HRA. Such a course of action for me would be patently unreasonable, not to mention extremely inconvenient.
The common sense meaning of the purpose and definitions of the HRA does not comport with the position taken by the Petitioners.

The Supreme Court of New Jersey did not go into a lengthy analysis of the HRA and its definitional requirements since they considered the issue moot.

However, I believe that an analysis of the terms "employee" as one employed for remuneration within Illinois, will show that "State employee" is clearly a subset of the term "employee" and is also intended to cover only those employed within Illinois for remuneration.

I raise this point because the finding referred to above, although moot, affords a patina of reasonableness to what is really a very unreasonable assertion by the State of Illinois.

It is clear from a reading of the HRA, that only "in-state" "State Employees" are intended to be covered. Given the clear requirement that one be employed within Illinois for remuneration and that the very purpose of the Act is to protect the citizens of the State of Illinois from discrimination within Illinois, it is clear that I was not covered.

The State legislature of Illinois was, or should have been aware, that it had "out of state employees". If it had intended to assume jurisdiction over these employees, it would have done so explicitly. It should have done so in the HRA and in policy statements to its "out of state" employees.

It is not surprising that Petitioners position regarding the HRA was not advanced generally before the present litigation. It is plain that it is merely an artifice for purposes of this case.

Thus, the State of Illinois, in attempting to deny me redress in New Jersey under the New Jersey Law Against Discrimination, N.J.S.A, 10:5-1 et seq.,would deny me any redress at all.

Based on the recent decision in Kimel v. Florida, __U.S.__, 120 s.Ct. 631 (2000), I could not file suit in the federal courts.

It would be unjust if a resident of New Jersey or any other state was to learn after the fact that he/she had no redress because they

were, by happenstance, injured in their home state by an agent of a sister state.

2. Review should be granted to permit the court to reexamine Nevada v. Hall in light of its recent recognition that sovereign immunity may be implied from the structure of the constitution.

Comment

I submit that since there is, to my knowledge, no conflict of law between any state jurisdiction and Nevada v. Hall, no intervention by the Court is necessary at this time.

The recent cases, alluded to by Petitioners, do not deal with co-equal sovereigns.

Kimel v.Florida, 120 S. Ct. 631(2000), deals with state versus federal law.

Alden v. Maine, 527 U.S. 706 (1999) deals with questions of state sovereignty within its own borders. This case held that Congress could not abrogate a refusal by Maine to waive its own sovereignty within its borders. Illinois does waive its sovereignty within Illinois. I am asking them to be amenable to suit within New Jersey as well. The Illinois Department of Revenue is able to function with no perceived detriment within Illinois by suits within Illinois.

Also, as mentioned above, Alden seems to comport with Hall in the opinion of Justice Kennedy for the majority in Alden.

Conclusion

For the reasons stated above, certiorari should not be granted.

Respectfully submitted,

Date: 6/30/2000

M J McDonnell

Michael J. McDonnell
Respondent, Pro Se

Certification

I certify that the statements made herein are true to the best of my knowledge.

I am aware of the penalties for making false statements to the Court.
I also certify that I served the Counsel of Record, via certified mail, three copies of this brief on or about the date indicated below.

Date: 6/20/2000

M. J. McDonnell

Michael J McDonnell
Respondent, Pro Se

APPENDIX

Exhibit 1.
M. McDonnell memo to Juan Morales, dtd. 7/7/93

ILLINOIS DEPARTMENT OF REVENUE

Century Plaza
15 Essex Rd.
Paramus, N.J., 07652

MEMORANDUM

To: Juan Morales FAM
From: Michael J. McDonnell RA1

Date: 7/7/93

Subject: Delay in Posting Checks
On May 24, 1993 the attached package of mail was received in this office. It was opened and placed in my mailbox. The cover letter alludes to checks included. I did not notice this however.

The items sent were sent to me as a result of my written request. (See attached letter dated 3/12/93.) I did not request checks be sent.

When the material was received, I had no reason to expect checks as I had not even finalized the audit.
The taxpayer figured interest up until 5/17. And included this in the checks.

I looked over the material and not seeing that checks were attached to the interior of the package, I put the package in the audit file.

I noticed that there were checks two days ago, when I worked on the audit file in the office.

The checks total $48,931. They were drawn of (sic) 5/17/93 and received in this office on 5/24/93.

Exhibit 2- Audit Log of Activities Relating to the Case in Question

HISTORY WORKSHEET Telephone No: 203-275-5859

Name: Phoenix Mutual
Address: 1 American Row
Address: Hartford, Ct.. 06115

Fein: 06-0493340

Date: Comments

7/13/92 - Went to taxpayers. Met with Mr. Pease. He informed me that Phoenix Mutual was in litigation regarding Federal Taxable Income. He informed me that income as reported for Illinois purposes was the company's best estimate of the income of the tax court litigation. The taxpayer has been filing Illinois returns on a timely basis based on their filed federal return. I was informed that the years 1975-through present are in litigation. 1980 was settled and an amended IL-1120X was filed.

5/20/93- Spoke with Glen Pease. He promised to send me for the following years:
1. Federal Returns
2. Original federal and Illinois returns.
3. Copies of Federal Court settlement spelling out FTI.
4. Check covering estimated liability.
The years that have been cleared up are 1975-79, and 1981.
1980 was settled and amended previously
(EDC-5)
5/20/93- 1982 forward remain under litigation.
5/26/93- Received summary letter and checks from taxpayer.
7/8/93- Completed write-up and submitted audit.

Exhibit-3 Memo From Brian McGrail to Juan Morales, dated 7/8/93.

ILLINOIS DEPARTMENT OF REVENUE
Century Plaza
15 Essex Road
Paramus, N.J. 07652

MEMORANDA(sic)

TO: Juan Morales FAM
FROM: Brian McGrail RAS

DATE: July 8, 1993

SUBJECT: Summary of Activities Regarding Mike McDonnell and Phoenix Home Life RAR's.

At approximately 11:00 am on 7/7/93 Paula informed me that she had just received five checks from Mike McDonnell. The checks were from Phoenix Home Life totaling approximately $48,900 and they were all dated 5/17.93.

When I questioned Mike, he indicated that he had picked up the IL-1120x's and correspondence from his mailbox and that he had not seen the checks. Because they were stapled to the IL-1120x's.

When I informed you of the problem concerning this audit, you had Mike write a memo indicating the facts concerning these checks.

In the early afternoon Mike, you and I met to discuss this incident. Mike claimed he did not expect to receive any checks or IL-1120x's. Mike further stated that he reviewed the correspondence albeit "not thoroughly" and therefore he did not see the checks.

Exhibit 3 (Continued)

Later this afternoon I spoke with the taxpayer, Mr. Glen Pease, about this, and he informed me that the RAR's were finalized in January 1993 and since the RAR's were appealed, it was just easier to file the returns themselves. Mr. Pease also indicated that Mike told him to send it all to him and he would wrap it up in his audit. Mr. Pease mentioned that Mike was not there very much.

Further investigation into Mike's EDC-5 (audit history worksheet) revealed that on 5/20/93 a statement indicated that Mike was expecting the checks. Moreover, on 5/26/93, Mike's EDC-5 states he received a summary letter and checks from the taxpayer.. This is in clear contradiction to the letter Mike gave you this morning and statements he made in our meeting this afternoon.

Please advise me as to the course of action regarding this audit and what disciplinary action should be taken.

Exhibit 4, Memo from Juan Morales to Joe Bartletti, dtd. July 8, 1993

ILLINOIS DEPARTMENT OF REVENUE
Century Plaza
15 Essex Rd.- 4th Floor
Paramus, N.J. 07652

MEMORANDUM

To: Joe Bartletti

From: Juan C. Morales

Date: July 8, 1993

Subject: Mike McDonnell

I am hereby requesting that auditor Mike McDonnell's employment with the Illinois Department of Revenue be terminated immediately.

Attached is Brian McGrail's memo regarding Mike McDonnell's latest incident. As you can see, it involves another incident where Mike has failed to follow up on his duties and responsibilities.

Enclosed are copies of the taxpayer's letter, the checks received, Mike's memo to me, the audit EDC-5, and various other documents relating to the Phoenix Mutual audit.

As you know, we have done everything possible to refrain from firing Mike McDonnell. However, we can no longer tolerate his lack of responsibility and unprofessional behavior. Especially, when his latest explanation and excuse totally contradicts the facts of the case.

Exhibit 4 (Continued)

If you have any questions and/or need any further information, please let me know. If necessary we can make copies of his entire regional personnel.

I would appreciate, for everyone's sake, that the request be granted as soon as possible.

Cc: Brian McGrail

Exhibit 5- Memo From Joe Bartletti to Mike Scaduto, Manager Bureau of Audit, dated July 14, 1993.

ILLINOIS DEPARTMENT OF REVENUE
Field Operations Division
101 West Jefferson Street
Springfield, Illinois 62794

MEMORANDUM

To: Mike Scaduto, Manager
Bureau of Audit

From: Joe Bartletti
Field Operations Division

Date: July 14, 1993

Subject: Mike McDonnell

Attached find a recommendation from FAM Juan Morales to terminate Revenue Auditor II Mike McDonnell. The latest episode involving Mr. McDonnell involves him maintaining five checks totaling $48,900 in his possession from May 24 to July 7. Furthermore, when questioned on July 7 about the incident, Mr. McDonnell denied he knew he had the checks. A later review of the audit file contradicted what he told management that day.

Mr. McDonnell's actions clearly violate D.O.R. and Audit Bureau policies. Based on his work record reflecting prior problems, I concur with Juan's recommendation to dismiss Mike McDonnell as soon as possible.

JB: rc

(Handwritten notes " Concur /Mike Scaduto 7/19/93" "Concur/ (name somewhat illegible, appears to be "David Bartholo" 7/29/93).